

Message Text

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ACTION ARA-14

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 STR-07 ITC-01 TRSE-00 ICA-11 SP-02
SOE-02 OMB-01 DOE-15 AF-10 EA-10 EUR-12 NEA-11
OIC-02 JUSE-00 XMB-02 NRC-05 OES-07 PM-05 ACDA-12
MCE-00 /204 W

-----072303 111844Z /42

R 111615Z MAY 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 7470
INFO USMISSION GENEVA
AMEMBASSY BUENOS AIRES
AMEMBASSY CARACAS
AMEMBASSY MEXICO
AMCONSUL SAO PAULO
AMCONSUL RIO DE JANEIRO

LIMITED OFFICIAL USE SECTION 1 OF 3 BRASILIA 3794

PASS STR ELECTRONICALLY

GENEVA FOR MTN

E.O. 11652: N/A
TAGS: ETRD, MTN, BR
SUBJ: US-BRAZIL SUB-GROUP ON TRADE (FINAL SESSION, AFTERNOON,
MAY 9)

1. SUMMARY. FINAL SESSION OF BRAZIL-US SUB-GROUP ON TRADE
WAS DEVOTED TO DISCUSSION OF CODES ON CUSTOMS VALUATION,
GOVERNMENT PROCUREMENT (INCLUDING IMPACT OF GOB LAW OF
SIMILARS IN THIS AREA), LICENSING, AND SAFEGUARDS. BRA-
ZILIANS SHOWED LITTLE INCLINATION TO ASSUME OBLIGATIONS
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AND ARGUED FOR EXTENSIVE S AND D TREATMENT FOR LDCS. US
CONTINUALLY STRESSED NEED FOR ACTIVE BRAZIL PARTICIPA-
TION IN CODE FORMULATION. IN CONCLUDING STATEMENTS,
BOTH HEADS OF DELEGATIONS SAID THEY FELT THAT PROGRESS
HAD BEEN MADE DURING SUB-GROUP MEETING AND HOPED THAT
JUNE MEETING IN GENEVA WOULD BE ABLE TO BUILD ON
RESULTS OF THIS MEETING. END SUMMARY.

2. CUSTOMS VALUATION. DISCUSSION ON THIS CODE WAS FAIRLY BRIEF. BARRACLOUGH (STATE/EB) SAID THAT OTHER COUNTRIES WERE PRESSING THE US TO ADOPT THE BTN, BUT THAT THIS WOULD BE A SIGNIFICANT MOVE FOR US TO MAKE. HARTZELL (USMTN) REQUESTED BRAZILIAN COMMENTS ON DRAFT CODE AND NOTED THAT BRAZILIANS HAD BEEN PARTICULARLY SILENT ON THIS CODE IN GENEVA. BARTHEL ROSA (BRAZ. DELEGATION FROM GENEVA) REPLIED THAT BRAZIL HAD LOOKED CAREFULLY AT THE DRAFT CODE, AND ASKED NEVES (GOB FINMIN) TO DISCUSS BRAZILIAN REACTION. NEVES' EXPOSITION CONCENTRATED ON TECHNICAL ASPECTS OF ARTICLES 1, 3, AND 6 OF THE DRAFT CODE. HE SAID THAT ARTICLE 1 WAS "NECESSARY BUT NOT SUFFICIENT," AND URGED THAT CONDITIONS BE GENERALIZED. HARTZELL COMMENTED THAT WE HAVE RAISED THIS ISSUE WITH THE EC. NEVES ALSO FELT THAT ARTICLE 6 WAS TOO GENERAL; DISCOUNTS AND ALLOWANCES SHOULD BE ENUMERATED RATHER THAN REMAIN AT THE LEVEL OF A GENERAL PRINCIPLE. ON ARTICLE 3 NEVES FELT THAT THE "CONCEPT OF SIMILARS" SHOULD APPLY ONLY TO GOODS OF THE SAME ORIGIN. IN A FINAL COMMENT, NEVES SAID THAT CUSTOMS VALUATION CODE MUST NOT INTERFERE WITH BRAZIL'S IMPORT REFERENCE PRICE SYSTEM.

3. GOVERNMENT PROCUREMENT. AMB. WOLFF SKETCHED LIMITED OFFICIAL USE

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BASIC US POSITION ON THIS CODE. HE BEGAN BY SAYING THAT THE GOVERNMENT PROCUREMENT CODE WAS NOT VERY POPULAR IN THE US AND THAT PRESSURES FOR RESTRICTIONS IN USG PROCUREMENT WERE CONSTANTLY INCREASING. HE NOTED THAT WHILE USG WOULD LIKE TO COUNTER THIS TENDENCY, SUCH ARGUMENTS HAVE LITTLE WEIGHT BECAUSE FOREIGN GOVERNMENT PROCUREMENT IS INCREASINGLY BEING CLOSED TO US FIRMS. HE SAID THAT RESTRICTIONS ON GOVERNMENT PROCUREMENT WERE IN FACT HIDDEN SUBSIDIES FOR DOMESTIC INDUSTRY. REGARDING THE CODE ITSELF, AMB. WOLFF STRESSED THAT US FELT THAT CODE SHOULD APPLY ONLY TO SIGNATORIES, BUT THAT S AND D WOULD PERHAPS BE EASIER TO SPECIFY HERE THAN IN OTHER CODES.

4. MEDEIROS (GOB FONMIN) BEGAN BY SAYING THAT BRAZIL WAS STILL EXAMINING THIS CODE AND THAT BRAZIL'S POSITION WAS STILL PRELIMINARY. HOWEVER, HE LATER INDICATED THAT BRAZIL'S INTEREST IN THIS CODE WAS MARGINAL SINCE BRAZIL DID NOT UNDERSTAND WHAT BENEFITS

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MCE-00 /204 W

-----072752 111843Z /42

R 111615Z MAY 78
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 7471
INFO USMISSION GENEVA
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GENEVA FOR MTN

IT WOULD PROVIDE TO BRAZIL. HE ARGUED THAT BY
ACCEPTING CODE IN CURRENT FORM BRAZIL WOULD BE
OPENING ITS MARKET TO FOREIGN (LARGELY DC) SUPPLIERS
BUT THAT ITS ABILITY TO COMPETE EFFECTIVELY IN DC
MARKETS WOULD NOT BE ENHANCED SINCE DCS LARGELY BUY
FROM OTHER DCS. HE SAID THAT BRAZIL THEREFORE WOULD
HAVE GREAT DIFFICULTIES IN ACCEPTING CODE OBLIGA-
TIONS UNLESS LDCS RECEIVED S AND D ENABLING THEM TO
SUBSUME ARTICLE 1 (A) AND (B) OBLIGATIONS OF DRAFT CODE
REGARDING NON-DISCR MINATION IN GOVERNMENT PROCUREMENT AND
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UNLESS LDCS ALSO RECEIVED S AND D IN REGARD TO DC

GOVERNMENT PROCUREMENT. UPON QUESTIONING FROM HARTZELL AND LANDE (STR), MEDEIROS DEFENDED S AND D FOR LDC GOVERNMENT PROCUREMENT BECAUSE LDC GOVERNMENT PROCUREMENT WAS "QUALITATIVELY DIFFERENT" FROM DC PROCUREMENT, AND BRAZIL WOULD NOT GIVE UP ITS "INDISPENSABLE FREEDOM" TO DIRECT ITS PROCUREMENTS FOR MAJOR DEVELOPMENT PROJECTS ON SUBJECTIVE GROUNDS. MONTGOMERY (USDOC) COMMENTED THAT BRAZIL'S CONCERNS MIGHT BE MET THROUGH CODE SPECIFICATIONS. LANDE SAID THAT US WAS WILLING TO CONSIDER SOME LESSER LEVEL OF LDC OBLIGATIONS FOR A LIMITED PERIOD OF TIME.

5. MEDEIROS INDICATED THAT BRAZIL WAS UNWILLING TO MOVE FORWARD WITH THIS CODE UNTIL SHAPE OF S AND D OFFERED IN THIS AREA BECAME CLEARER. US ADMITTED THAT CODE NEGOTIATION STILL HAD MAJOR PROBLEMS TO BE WORKED OUT, ESPECIALLY WITH EC REGARDING CODE COVERAGE, BUT URGED BRAZIL TO PARTICIPATE MORE ACTIVELY IN CODE NEGOTIATIONS SO THAT BRAZIL HAD SOME IMPACT ON CODE EVOLUTION AND WAS NOT PRESENTED WITH A FAIT ACCOMPLI AT A LATER DATE.

6. LAW OF SIMILARS. FOLLOWING DISCUSSION ON THE GOVERNMENT PROCUREMENT CODE, USDEL INITIATED DISCUSSION OF THE GOB LAW OF SIMILARS, POSTPONED FROM THE PREVIOUS AFTERNOON'S SESSION ON IMPORT LICENSES AS NON-TARIFF MEASURES BECAUSE OF ITS APPLICABILITY ONLY TO GOVERNMENT PROCUREMENT. SMITH (EMBASSY COMMERCIAL COUNSELOR) STATED US IMPRESSION THAT THE LAW OF SIMILARS REQUIRED GOB TO BUY A DOMESTICALLY-PRODUCED ITEM IN ALL CASES WHEN SUCH AN ITEM WAS AVAILABLE, REGARDLESS OF ITS PRICE VIS A VIS AN IMPORTED ITEM. LIMITED OFFICIAL USE

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CURY (GOB FINMIN) COUNTERED BY SAYING THAT LAW OF SIMILARS ONLY APPLIED WHEN POTENTIAL IMPORTS WERE SUBJECT TO GOB INCENTIVES. SMITH REPLIED THAT HE UNDERSTOOD THAT MOST GOB IMPORTS WERE SUBJECT TO INCENTIVES, AND THEREFORE LAW OF SIMILARS HAD WIDE APPLICABILITY. CURY, IN UNCONVINCING REBUTTAL, DENIED THAT SUCH WAS THE CASE. LANDE EXPRESSED US CONCERN OVER THE OPEN-ENDED NATURE OF THE LAW OF SIMILARS AND OTHER SIMILAR BRAZILIAN MEASURES, AND ASKED WHETHER ANY GUIDELINES CONCERNING THE COVERAGE OF THE LAW OF SIMILARS HAD BEEN PUBLISHED. CURY REPLIED THAT THE DECREE ESTABLISHING THE LAW OF SIMILARS WAS GENERAL AND THAT ONLY EXCEPTIONS WERE SUBJECT TO SPECIAL DECREES. (FYI: OIL EXPLORATION AND PRODUCTION EQUIPMENT AND EQUIPMENT FOR BRAZIL'S

NUCLEAR PROGRAM HAVE REPORTEDLY BEEN SUBJECT TO EXEMPTIONS FROM THE LAW OF SIMILARS.) LANDE ASKED THAT SMITH OBTAIN FROM CURY RELEVANT LEGISLATION AND INTERPRETATIONS SO THAT US EXPORTERS COULD BE INFORMED, AND HE SAID THAT THE AVAILABILITY OF THIS INFORMATION WOULD HELP TO CONVEY A FAVORABLE IMAGE THAT BRAZIL'S IMPORT SCHEME WAS NOT AS CLOSED AS IT GENERALLY APPEARED TO US EXPORTERS.

7. LICENSING. DISCUSSION WAS RELATIVELY BRIEF AND NON-POLEMICAL IN THIS AREA. MONTGOMERY DESCRIBED DRAFT LICENSING CODE AS REFERRING TO TWO TYPES OF LICENSES, AUTOMATIC (THOSE UTILIZED STRICTLY FOR STATISTICAL PURPOSES) AND RESTRICTIVE. HARTZELL SAID THAT US REGARDED MAINTENANCE OF LICENSING SYSTEM FOR SURVEILLANCE OR MONITORING OF IMPORTS AS A LEGITIMATE BASE FOR AUTOMATIC LICENSING. MONTGOMERY SAID THAT IN LIGHT OF BRAZIL'S AFFIRMATIONS DURING THE PREVIOUS AFTERNOON'S SESSION THAT BRAZIL'S EXPORT LICENSES (EXCEPT IN CERTAIN SECTORS) WERE AUTOMATIC, US WAS LIMITED OFFICIAL USE

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R 111615Z MAY 78
FM AMEMBASSY BRASILIA
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GENEVA FOR MTN

CONCERNED ONLY ABOUT DELAYS THAT US EXPORTERS HAD EXPERIENCED IN GETTING LICENSES, ESPECIALLY WHEN IMPORT WAIVER WAS REQUESTED. HUGUENEY (GOB FONMIN) ASKED THAT SPECIFIC DELAY PROBLEMS BE BROUGHT TO BRAZIL'S ATTENTION FOR DISCUSSION AT A LATER TIME. IN GENERAL REMARKS, HUGUENEY SAID THAT BRAZIL WAS NOT PREPARED TO DISCUSS THE PHASE-OUT OF ITS IMPORT LICENSE SYSTEM, WHICH BRAZIL REGARDED AS ESSENTIAL FOR STATISTICAL PURPOSES. HE SAID THAT BRAZIL WAS PREPARED TO DISCUSS RULES ON TRANSPARENCY, NON-DISCRIMINATION, DELAYS, AND FINES AND PENALTIES. BARTHEL ROSA COM-
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MENTED THAT GOB EXPERTS ARE STUDYING THIS CODE WITH A VIEW TOWARD ENGAGING IN DISCUSSION "IF POSSIBLE". LANDE POINTED OUT THAT THIS WAS AN AREA WHERE IT WAS HARD TO ADD UP THE OBLIGATIONS AND BENEFITS, BUT HE URGED BRAZILIAN PARTICIPATION.

8. SAFEGUARDS. BARTHEL ROSA BEGAN BY STATING THAT THE SAFEGUARDS CODE WAS IMPORTANT FOR THE ENTIRE MTN AND WAS ONE OF BRAZIL'S HIGHEST MTN PRIORITIES. HE STATED THAT BRAZIL'S PRIMARY OBJECTIVE IN THIS CODE WAS TO ASSURE THAT LDCS RECEIVED GREATER FLEXIBILITY REGARDING ANY OBLIGATIONS THEY ASSUMED UNDER ANY SAFEGUARDS CODE. HE SAID THAT WHILE BRAZIL DID NOT HAVE CONCRETE PROPOSALS TO MAKE AT THIS TIME BECAUSE BRAZIL WANTED TO HAVE AN IDEA ON THE SHAPE THE CODE WAS ASSUMING BEFORE MAKING DEFINITIVE SUGGESTIONS, IN GENERAL, BRAZIL WOULD INSIST THAT THE CODE INCLUDE A CLAUSE ENABLING LDCS TO TAKE PROTECTIVE ACTION ON GROUNDS OTHER THAN THE MATERIAL INJURY (LATER CORRECTED BY HARTZELL TO SERIOUS INJURY). HE SAID THAT FOR INSTANCE LDCS SHOULD BE ABLE TO TAKE SAFEGUARD ACTIONS ON WIDER GROUNDS RELATED TO DEVELOPMENT NEEDS (INCLUDING INFANT INDUSTRIES). HE ALSO SAID THAT LDCS SHOULD HAVE MORE FLEXIBILITY REGARDING TIME LIMITS FOR THE APPLICATION OF SAFEGUARDS. HE ADMITTED THAT ARTICLE 18 ALSO MET SOME OF BRAZIL'S CONCERNS.

9. HARTZELL RESPONDED BY SAYING THAT IN US VIEW BRAZIL ALREADY HAD SIGNIFICANT FLEXIBILITY UNDER GATT, FOR INSTANCE ON TARIFF BINDING, AND THAT IT WAS UNCLEAR HOW BRAZIL'S PROPOSALS IN THIS AREA DIFFERED FROM ARTICLE 18. LANDE ALSO QUESTIONED LIMITED OFFICIAL USE

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WHETHER BRAZIL'S CONCERNS COULD BEST BE DEALT WITH UNDER SAFEGUARDS CODE, FRAMEWORK OR SPECIFIC PRODUCT NEGOTIATIONS. HE COMMENTED THAT BRAZIL'S ZEAL FOR LDC FLEXIBILITY IN SAFEGUARDS AREA COULD INFLUENCE SOME RECALCITRANT DCS INTO ARGUING FOR LESSER DC OBLIGATIONS. FRAMEWORK WAS NOT APPROPRIATE SINCE IF ENABLING CLAUSE INCLUDED, BALANCE OF BENEFITS WOULD BE IN LDOS FAVOR AND IT WOULD NOT BE POSSIBLE TO INCLUDE ADDITIONAL FLEXIBILITIES FOR LDOS. IF, HOWEVER, BRAZIL AGREED TO BIND ITS TARIFF SCHEDULE, THERE COULD BE POSSIBILITY FOR ALLOWING BRAZIL MORE FLEXIBILITY.

10. CONCLUDING REMARKS. IN HIS CONCLUDING REMARKS, PROENCA ROSA (GOB FONIN, DEL. HEAD) ASSESSED THE MEETING AS "VERY FRUITFUL AND POSITIVE", ESPECIALLY IN REGARD TO LAYING GROUNDWORK FOR JUNE AND JULY MEETINGS IN GENEVA. AMB. WOLFF REMARKED THAT HIS BRIEFING MATERIALS, SINCE THEY WERE IN GENERAL A LIST OF BILATERAL TRADE PROBLEMS, HAD GIVEN HIM THE IMPRESSION THAT THE US-BRAZIL SUB-GROUP ON TRADE MEETING WOULD NOT BE FRUITFUL. HE SAID, HOWEVER, THAT HE LEFT THE TALKS "VERY MUCH ENCOURAGED", AND THAT BY "TALKING THROUGH THE BILATERAL ISSUES WE SAW THAT PROGRESS WAS POSSIBLE."

11. THIS MESSAGE CLEARED BY LANDE AND OTHER DELEGATION MEMBERS BUT NOT BY AMBASSADOR WOLFF. JOHNSON

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Message Attributes

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